

**ENTERED**

January 22, 2018

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

DARRYL LATHAN,

Plaintiff,

VS.

WILLIAM STEVENS, *et al*,

Defendants.

§  
§  
§  
§  
§  
§  
§  
§

CIVIL NO. 2:16-CV-147

**ORDER**

The Court has before it the July 8, 2016, Memorandum and Recommendation (“M&R”) of the Magistrate Judge to whom this case has been referred (Dkt. No. 8), Defendants Major M. Alsobrook (“Alsobrook”) and K. Gaitan’s (“Gaitan”) Motion for Summary Judgment (Dkt. No. 30), the Magistrate Judge’s August 7, 2017, M&R (Dkt. No. 41) recommending that the Court grant Defendant’s motion for summary judgment, Defendant TDCJ’s Motion to Dismiss (Dkt. No. 45), the Magistrate Judge’s October 20, 2017, M&R (Dkt. No. 53) recommending that the Court deny the motion to dismiss, and Defendant Texas Department of Criminal Justice’s (“TDCJ”) objections to that M&R (Dkt. No. 55).

Plaintiff Darryl Lathan (“Lathan”) brings prisoner civil rights claims against Defendants Alsobrook and Gaitan under 28 U.S.C. § 1983. Specifically, Lathan claims that, during his incarceration at the McConnell Unit in Beeville, Texas, Defendants Alsobrook and Gaitan were deliberately indifferent to his medical condition when they issued his housing and work assignments. Dkt. No. 1 at 6. Relatedly, Lathan argues that those assignments violated the Americans with Disabilities Act (“ADA”) and the Rehabilitation Act (“RA”), and sues TDCJ on that basis. The Magistrate Judge recommends that Lathan’s § 1983 claims against Alsobrook and Gaitan be dismissed for failure to exhaust administrative remedies and because Alsobrook and Gaitan enjoy qualified immunity. Dkt. No. 41 at 1-2.

The Magistrate Judge recommends that the Court retain Lathan's ADA and RA claims against TDCJ. Dkt. No. 53 at 10.

After independently reviewing the record and applicable law, this Court **OVERRULES** Defendant TDCJ's objections (Dkt. No. 55) to the Magistrate Judge's October 20, 2017,<sup>1</sup> M&R and **ADOPTS** the M&Rs (Dkt. Nos. 8, 41, 53). Accordingly, the Court:

- **DISMISSES** Plaintiff's § 1983 claim against Defendant Director Stevens/Davis;
- **GRANTS** Defendants Alsobrook and Gaitan's Motion for Summary Judgment (Dkt. No. 30);
- **DISMISSES** Plaintiff's deliberate indifference claims against Defendants Alsobrook and Gaitan;
- **DENIES** Defendant TDCJ's motion to dismiss (Dkt. No. 45).

SIGNED this 19th day of January, 2018.

A handwritten signature in black ink, appearing to read 'Hilda Tagle', written over a horizontal line.

Hilda Tagle  
Senior United States District Judge

---

<sup>1</sup> As the Magistrate Judge noted, TDCJ may raise the issue of Eleventh-Amendment immunity "on summary judgment following discovery on Plaintiff's ADA claim." Dkt. No. 53 at 10 n. 4.